

ASSEMBLY BILL

No. 112

Introduced by Assembly Member Goldberg

January 13, 2003

An act to amend Sections 667 and 1170.12 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 112, as introduced, Goldberg. Sentencing: three strikes.

Existing law, contained in 2 initiative statutes, requires that if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions, as defined, then the court must adhere to specified sentence enhancements to be served consecutively and follow other specified sentencing restrictions.

This bill would instead provide that if a defendant has been convicted of a violent or serious felony, as defined, and it has been pled and proved that the defendant has one or more violent or serious felony convictions, as defined, then the court must adhere to those specified sentence enhancements, to be served consecutively, and follow other specified sentencing restrictions.

This bill would provide a procedure for those persons who were sentenced under the three strikes statutes to an indeterminate life sentence before the operative date of this bill to be resentenced pursuant to the provisions of this bill.

This bill would provide for the submission of its provisions to the voters for approval.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction ~~which~~ *that* includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, “serious felony” means a serious felony listed in subdivision (c) of Section 1192.7.

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature in enacting subdivisions (b) to ~~(i)~~ *(k)*, inclusive, to ensure longer prison sentences and greater punishment for those who commit a ~~felony~~ *a violent or serious felony, as defined in subdivision (d)*, and have been previously convicted of ~~serious and/or violent felony offenses~~ *a violent or serious felony, as defined in subdivision (d)*.

(c) Notwithstanding any other *provision of* law, if a defendant has been convicted of a ~~felony~~ *a violent or serious felony, as defined in subdivision (d)*, and it has been pled and proved that the defendant has one or more prior felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent ~~felony~~ conviction for a violent or serious felony as defined in subdivision (d).

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *violent or serious* felony conviction and the current *violent or serious* felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *violent or serious* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one *violent or serious or violent* felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other *provision of* law and for the purposes of subdivisions (b) to ~~(i)~~ (h), inclusive, a prior conviction of a *violent or serious* felony shall be defined as:

(1) Any *conviction for any* offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior *violent*

1 *or serious* felony conviction for purposes of subdivisions (b) to ~~(i)~~
2 ~~(h)~~, inclusive, shall be made upon the date of that prior conviction
3 and is not affected by the sentence imposed unless the sentence
4 automatically, upon the initial sentencing, converts the felony to
5 a misdemeanor. None of the following dispositions shall affect the
6 determination that a prior conviction is a prior *violent or serious*
7 felony for purposes of subdivisions (b) to ~~(i)~~ ~~(h)~~, inclusive:

8 (A) The suspension of imposition of judgment or sentence.

9 (B) The stay of execution of sentence.

10 (C) The commitment to the State Department of Health
11 Services as a mentally disordered sex offender following a
12 conviction of a felony.

13 (D) The commitment to the California Rehabilitation Center or
14 any other facility whose function is rehabilitative diversion from
15 the state prison.

16 (2) A conviction in another jurisdiction for an offense that, ~~if~~
17 ~~committed in California, is punishable by imprisonment in the~~
18 ~~state prison. A prior conviction of a particular felony shall include~~
19 ~~a conviction in another jurisdiction for an offense that includes all~~
20 ~~of the elements of the particular~~ *a violent or serious* felony as
21 defined in subdivision (c) of Section 667.5 or subdivision (c) of
22 Section 1192.7.

23 (3) A prior juvenile adjudication shall constitute a prior *violent*
24 *or serious* felony conviction for purposes of sentence
25 enhancement if:

26 (A) The juvenile was 16 years of age or older at the time he or
27 she committed the prior offense.

28 (B) The prior offense is ~~listed in subdivision (b) of Section 707~~
29 ~~of the Welfare and Institutions Code or described in paragraph (1)~~
30 ~~or (2) as a of this subdivision as a violent or serious felony.~~

31 (C) The juvenile was found to be a fit and proper subject to be
32 dealt with under the juvenile court law.

33 (D) The juvenile was adjudged a ward of the juvenile court
34 within the meaning of Section 602 of the Welfare and Institutions
35 Code because the person committed an offense listed in
36 subdivision (b) of Section 707 of the Welfare and Institutions
37 Code.

38 (e) For purposes of subdivisions (b) to ~~(i)~~ ~~(h)~~, inclusive, and in
39 addition to any other enhancement or punishment provisions

1 which may apply, the following shall apply where a defendant has
2 a prior *violent or serious* felony conviction:

3 (1) If a defendant has one prior *violent or serious* felony
4 conviction that has been pled and proved, the determinate term or
5 minimum term for an indeterminate term shall be twice the term
6 otherwise provided as punishment for the current *violent or*
7 *serious* felony conviction.

8 (2) (A) If a defendant has two or more prior *violent or serious*
9 felony convictions as defined in subdivision (d) that have been
10 pled and proved, the term for the current *violent or serious* felony
11 conviction shall be an indeterminate term of life imprisonment
12 with a minimum term of the indeterminate sentence calculated as
13 the greater of:

14 (i) Three times the term otherwise provided as punishment for
15 each current *violent or serious* felony conviction subsequent to the
16 two or more prior *violent or serious* felony convictions.

17 (ii) Imprisonment in the state prison for 25 years.

18 (iii) The term determined by the court pursuant to Section 1170
19 for the underlying conviction, including any enhancement
20 applicable under Chapter 4.5 (commencing with Section 1170) of
21 Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

22 (B) The indeterminate term described in subparagraph (A)
23 shall be served consecutive to any other term of imprisonment for
24 which a consecutive term may be imposed by law. Any other term
25 imposed subsequent to any indeterminate term described in
26 subparagraph (A) shall not be merged therein but shall commence
27 at the time the person would otherwise have been released from
28 prison.

29 (f) (1) Notwithstanding any other law, subdivisions (b) to ~~(i)~~
30 ~~(h)~~, inclusive, shall be applied in every case in which a defendant
31 has a prior *violent or serious* felony conviction as defined in
32 subdivision (d). The prosecuting attorney shall plead and prove
33 each prior *violent or serious* felony conviction except as provided
34 in paragraph (2).

35 (2) The prosecuting attorney may move to dismiss or strike a
36 prior *violent or serious* felony conviction allegation in the
37 furtherance of justice pursuant to Section 1385, or if there is
38 insufficient evidence to prove the prior conviction. If upon the
39 satisfaction of the court that there is insufficient evidence to prove

1 the prior *violent or serious* felony conviction, the court may
2 dismiss or strike the allegation.

3 (g) Prior *violent or serious* felony convictions shall not be used
4 in plea bargaining as defined in subdivision (b) of Section 1192.7.
5 The prosecution shall plead and prove all known prior *violent or*
6 *serious* felony convictions and shall not enter into any agreement
7 to strike or seek the dismissal of any prior *violent or serious* felony
8 conviction allegation except as provided in paragraph (2) of
9 subdivision (f).

10 (h) All references to existing statutes in subdivisions (c) to (g),
11 inclusive, are to statutes as they existed on June 30, 1993.

12 (i) If any provision of subdivisions (b) to (h), inclusive, or the
13 application thereof to any person or circumstance is held invalid,
14 that invalidity shall not affect other provisions or applications of
15 those subdivisions which can be given effect without the invalid
16 provision or application, and to this end the provisions of those
17 subdivisions are severable.

18 (j) The provisions of this section shall not be amended by the
19 Legislature except by statute passed in each house by rollcall vote
20 entered in the journal, two-thirds of the membership concurring,
21 or by a statute that becomes effective only when approved by the
22 electors.

23 SEC. 2. Section 1170.12 of the Penal Code is amended to
24 read:

25 1170.12. (a) Notwithstanding any other provision of law, if
26 a defendant has been convicted of a *violent or serious* felony and
27 it has been pled and proved that the defendant has one or more
28 *violent or serious* prior felony convictions, as defined in
29 subdivision (b), the court shall adhere to each of the following:

30 (1) There shall not be an aggregate term limitation for purposes
31 of consecutive sentencing for any subsequent *violent or serious*
32 felony conviction.

33 (2) Probation for the current offense shall not be granted, nor
34 shall execution or imposition of the sentence be suspended for any
35 prior offense.

36 (3) The length of time between the prior *violent or serious*
37 felony conviction and the current *violent or serious* felony
38 conviction shall not affect the imposition of sentence.

39 (4) There shall not be a commitment to any other facility other
40 than the state prison. Diversion shall not be granted nor shall the

defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *violent or serious* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one *violent or serious or violent* felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(b) Notwithstanding any other provision of law and for the purposes of this section, a ~~prior~~ conviction of a *violent or serious* felony shall be defined as:

(1) Any *conviction for any* offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony ~~in this state~~. The determination of whether a prior conviction is a prior *violent or serious* felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *violent or serious* felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

1 (C) The commitment to the State Department of Health
2 Services as a mentally disordered sex offender following a
3 conviction of a felony.

4 (D) The commitment to the California Rehabilitation Center or
5 any other facility whose function is rehabilitative diversion from
6 the state prison.

7 (2) A conviction in another jurisdiction for an offense that, ~~if~~
8 ~~committed in California, is punishable by imprisonment in the~~
9 ~~state prison. A prior conviction of a particular felony shall include~~
10 ~~a conviction in another jurisdiction for an offense that includes all~~
11 ~~of the elements of the particular~~ *a violent or serious* felony as
12 defined in subdivision (c) of Section 667.5 or subdivision (c) of
13 Section 1192.7.

14 (3) A prior juvenile adjudication shall constitute a prior *violent*
15 *or serious* felony conviction for purposes of sentence
16 enhancement if:

17 (A) The juvenile was ~~sixteen~~ 16 years of age or older at the time
18 he or she committed the prior offense, ~~and~~.

19 (B) The prior offense is

20 ~~(i) listed in subdivision (b) of Section 707 of the Welfare and~~
21 ~~Institutions Code, or~~

22 ~~(ii) listed in this subdivision as a felony, and as a violent or~~
23 ~~serious felony.~~

24 (C) The juvenile was found to be a fit and proper subject to be
25 dealt with under the juvenile court law, ~~and~~.

26 (D) The juvenile was adjudged a ward of the juvenile court
27 within the meaning of Section 602 of the Welfare and Institutions
28 Code because the person committed an offense listed in
29 subdivision (b) of Section 707 of the Welfare and Institutions
30 Code.

31 (c) For purposes of this section, and in addition to any other
32 enhancements or punishment provisions which may apply, the
33 following shall apply where a defendant has a prior *violent or*
34 *serious* felony conviction:

35 (1) If a defendant has one prior *violent or serious* felony
36 conviction that has been pled and proved, the determinate term or
37 minimum term for an indeterminate term shall be twice the term
38 otherwise provided as punishment for the current *violent or*
39 *serious* felony conviction.

(2) (A) If a defendant has two or more prior *violent or serious* felony convictions, as defined in ~~paragraph (1)~~ of subdivision (b), that have been pled and proved, the term for the current *violent or serious* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(i) ~~three~~ *Three* times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior *violent or serious* felony convictions, ~~or~~.

(ii) ~~twenty-five years or Imprisonment in the state prison for 25 years.~~

(iii) ~~the~~ *The* term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior *violent or serious* felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior *violent or serious* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior *violent or serious* felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior *violent or serious* felony conviction, the court may dismiss or strike the allegation.

(e) Prior *violent or serious* felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior *violent or serious* felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior *violent or serious* felony

1 conviction allegation except as provided in paragraph (2) of
2 subdivision (d).

3 *(f) All references to existing statutes in this section are to*
4 *statutes as they existed on June 30, 1993.*

5 *(g) If any provision of subdivision (a) to (h), inclusive, or the*
6 *application thereof to any person or circumstance is held invalid,*
7 *that invalidity shall not affect other provisions or applications of*
8 *those subdivisions that can be given effect without the invalid*
9 *provision or application, and to this end the provisions of those*
10 *subdivisions are severable.*

11 *(h) The provisions of this section shall not be amended by the*
12 *Legislature except by statute passed in each house by rollcall vote*
13 *entered in the journal, two thirds of the membership concurring,*
14 *or by a statute that becomes effective only when approved by the*
15 *electors.*

16 SEC. 3. It is the intent of the People in enacting this act to
17 revise those felonies that trigger possible sentencing
18 enhancements under “three strikes” by establishing a list of
19 felonies that will constitute violent or serious felonies for purposes
20 of prior strikes and currently charged felonies. It is further the
21 intent of the People that certain nonviolent offenses be removed
22 from the felonies that qualify as a current felony for purposes of
23 sentence enhancement pursuant to the three strikes statutes. It is
24 also the intent of the People that certain individuals who were
25 sentenced under the three strikes law prior to its amendment by this
26 act shall qualify for resentencing.

27 SEC. 4. Notwithstanding Section 1170 of the Penal Code,
28 individuals sentenced pursuant to Section 667, 1170.12, or both,
29 of the Penal Code, may petition for resentencing pursuant to this
30 act, as follows:

31 (a) A person who was convicted of a felony and is currently
32 serving an indeterminate term of life in prison may make a written
33 motion before the trial court that entered the judgment of
34 conviction in his or her case, for resentencing, pursuant to the
35 provisions of this act, if the following apply:

36 (1) The person was sentenced pursuant to Section 667,
37 1170.12, or both, of the Penal Code, prior to those sections being
38 amended by this act.



1 (2) The currently charged felony resulting in the imposition of
2 an indeterminate term of life in prison was not described as a
3 violent or serious felony pursuant to this act.

4 (b) A person who is currently serving an indeterminate term of
5 life in prison for a felony by virtue of a plea may make a written
6 motion before the trial court that entered the judgment of
7 conviction in his or her case, for resentencing, pursuant to the
8 provisions of this act, if the following apply:

9 (1) The person was sentenced pursuant to Section 667,
10 1170.12, or both, of the Penal Code, prior to those sections being
11 amended by this act.

12 (2) The currently charged felony resulting in the imposition of
13 an indeterminate term of life in prison was not described as a
14 violent or serious felony pursuant to this act.

15 (c) The person making the motion before the court pursuant to
16 subdivision (b) shall, in the written motion, expressly waive
17 double jeopardy for purposes of resentencing, in regard to any
18 charges arising out of the same set of operative facts resulting in
19 the plea, for charges that were not filed, or were dismissed
20 pursuant to the plea.

21 (d) If the court determines that the person making the motion
22 for resentencing was sentenced pursuant to the three strikes
23 statutes prior to their amendment by this act, and the person meets
24 the requirements of either subdivision (a) or (b), the court shall
25 order that person to be resentenced, subject to subdivision (f), and
26 in compliance with the sentencing laws as amended by this act.

27 (e) (1) If the court grants the motion for resentencing for a
28 person meeting the requirements of subdivision (a), the district
29 attorney may also file any charges based on the same set of
30 operative facts that resulted in the conviction, that were not filed
31 in connection with the conviction, and for which the statute of
32 limitations has not expired.

33 (2) If the court grants the motion for resentencing for a person
34 meeting the requirements of subdivision (b), a district attorney
35 seeking to file or refile charges arising out of the same set of
36 operative facts resulting in the plea that were not filed or were
37 dismissed pursuant to the plea shall obtain the court's permission
38 to file or refile those charges. The district attorney shall have to
39 show by a preponderance of the evidence that the charges would
40 have been filed, or would not have been dismissed, but for the plea.

1 (f) A person who meets the requirements of subdivision (a) or
2 (b) shall be entitled to representation by counsel to prepare a
3 motion under this section, and for the purposes of resentencing,
4 trial, or retrial. The person may request appointment of counsel by
5 sending a written request to the court.

6 (g) The motion for resentencing shall include the person's
7 statement that one or more of the currently charged felonies
8 resulting in the conviction or plea that resulted in the person's
9 sentence was a felony that is not described as a violent or serious
10 felony pursuant to this act.

11 (h) If any of the information required in subdivision (g) is
12 missing from the motion, the court shall return the written motion
13 to the convicted person and advise him or her that the matter cannot
14 be considered without the missing information.

15 (i) Notice of the motion shall be served on the Attorney General
16 and the district attorney in the county of conviction. Responses, if
17 any, shall be filed within 60 days of the date on which the Attorney
18 General and the district attorney are served with the motion, unless
19 a continuance is granted for good cause.

20 (j) The court, in its discretion, may order a hearing on the
21 motion. The motion shall be heard by the judge who conducted the
22 trial, or accepted the convicted person's plea of guilty or nolo
23 contendere, unless the presiding judge determines that judge is
24 unavailable. Upon request of either party, the court may order, in
25 the interest of justice, that the convicted person be present at the
26 hearing of the motion.

27 (k) Notwithstanding any other provision of law, the right to file
28 a motion for resentencing pursuant to this act is absolute and shall
29 not be waived. This prohibition applies to, but is not limited to, a
30 waiver that is given as part of an agreement resulting in a plea of
31 guilty or nolo contendere.

32 (l) Nothing in this section shall be construed as limiting the
33 grounds for a writ of habeas corpus, or as precluding any other
34 remedy.

35 (m) Under no circumstances may the resentencing, trial, or
36 retrial of any individual pursuant to this section result in a sentence
37 that is longer than the sentence the individual is making a motion
38 to change.

39 (n) The provisions of this section are severable. If any
40 provision of this section or its application is held invalid, that



1 invalidity shall not affect other provisions or applications that can
2 be given effect without the invalid provision or application.
3 SEC. 5. Sections 1, 2, 3, and 4 of this act affect an initiative
4 statute and shall become effective only when submitted to, and
5 approved by, the voters of California, pursuant to subdivision (c)
6 of Section 10 of Article II of the California Constitution.

